

Emerging Victimhood: Moving Towards the Protection of Domestic Juveniles Involved in Prostitution

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*"Children can never consent to prostitution. It is always exploitation."*¹

– Chris Swecker, Assistant Director in the FBI Criminal Investigation Division

INTRODUCTION

While most discussions about prostitution typically take place within the debate between those who wish to abolish sex work and those who wish to legalize it, this Note instead focuses on how juveniles involved in prostitution are affected by the laws currently in place. Even assuming the legalization of prostitution/sex work in the U.S., it is hard to imagine a compelling argument in support of permitting minors to engage in such work. The fact that society would largely be against allowing minors to engage in legalized sex work—an assumption supported by the existence of laws criminalizing child pornography and statutory rape—seems to support the proposition that juveniles currently involved in prostitution should be viewed as victims rather than criminals. The current state of the law in the United States reflects the country's struggle with how to categorize young people who break the law by engaging in commercial sex. On the one hand, prostitution and sex work are largely illegal,² making those who engage in such work criminals. On the other hand, however, the large majority of juveniles engaged in illegal sex work cannot even legally consent to the commercial sex acts that they are being prosecuted for. How can a juvenile be both a criminal and a victim based on a single sexual act? Does the fact that there was a valued exchange automatically transform the otherwise statutorily raped juvenile from victim to criminal? This ambiguity is one that needs to be reconciled in both state and federal laws in an effort to protect our youth.³

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1. POLARIS PROJECT, 2013 ANALYSIS OF STATE HUMAN TRAFFICKING LAWS 34 (2013), *available at* http://www.polarisproject.org/storage/2013_State_Ratings_Analysis_Full_Report.pdf.

2. With the exception of a few counties in Nevada. *See Prostitution in Nevada*, WIKIPEDIA: THE FREE ENCYCLOPEDIA (Dec. 20, 2013, 2:31 PM), http://en.wikipedia.org/wiki/Prostitution_in_Nevada (explaining that prostitution is legal in 12 of the 17 counties in Nevada, most of which are in isolated rural areas). Even while legalizing prostitution, Nevada law makes it a felony to solicit a child for prostitution, NEV. REV. STAT. ANN. § 201.354 (West 2009), and defines "child" as "a person less than 18 years of age," NEV. REV. STAT. ANN. § 201.295 (West 2013). *See also* NEV. REV. STAT. ANN. § 201.380 (West 2013) (making it illegal to have any structure "for the purposes of prostitution . . . situated within 400 yards of any schoolhouse or schoolroom used by any public or common school.").

3. DAVID FINKELHOR & RICHARD ORMROD, PROSTITUTION OF JUVENILES: PATTERNS FROM NIBRS 1 (2004), *available at* <https://www.ncjrs.gov/pdffiles1/ojdp/203946.pdf> ("The social and legal status of juveniles involved in prostitution is somewhat ambiguous. On the one hand, they are offenders

The federal government has reconciled its policy against international human trafficking with its treatment of domestic juveniles involved in prostitution—treating both groups as victims as opposed to victim and criminal, respectively. However, many states continue to treat these children and adolescents as delinquents despite the fact that the majority of other state laws (such as statutory rape laws) regulating the sexual conduct of juveniles very clearly recognize them as victims.⁴ Even as several states have begun to modify their laws to more closely resemble federal ones, far too few have unequivocally recognized juveniles' status as sexually exploited victims in the context of prostitution.

In this Note, I examine the United States' response to domestic juveniles involved in prostitution⁵ on both a federal and state level, as well as why the current trend towards viewing these juveniles as victims rather than criminals is the right move. In the end, I suggest recommendations for improving legal and social responses to this vulnerable group.

I. THE PROBLEM: AN OVERVIEW OF JUVENILE PROSTITUTES IN THE U.S.

The prostitution of juveniles is alive and well in the United States, despite the general inclination to think of it as a “third world problem” that rarely touches our American shores. The United States tends to think of prostitutes as adults, and sex trafficked victims as foreign children; our children are not subjected to such exploitation. The actual numbers, however, undermine this general misconception. In 2006 and 2010, approximately 1,600 and 1,000 juveniles were arrested for prostitution, respectively.⁶ The numerical decrease reflected in the statistics does not mean that the issue of juvenile prostitution is subsiding. According to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), juveniles make up about 2% of all arrests for prostitution (or commercial vice as it is referred to in some states), and this number has not changed much from 2006 to 2012 (2% and 1.7%, respectively), indicating that the rate at which juveniles are engaged in commercial sex work is relatively stable, despite the drop in arrests overall.⁷ Just this summer, in late July 2013, an extensive sex trafficking sting

involved in illegal and delinquent behavior. On the other, they are children who are being victimized by unscrupulous adults. Clearly, these youth are being harmed emotionally and are in considerable physical danger. Accordingly, from both a child protective and law enforcement strategy, our goal should be the same—the eradication of the sexual exploitation of youth.”).

4. See discussion of age of consent and child pornography laws *infra* Part II.B.

5. I have chosen the term “juveniles involved in prostitution” because it encompasses juveniles who were forced into prostitution by others as well as those who engage in commercial sex work as a means of survival, and it implicates the perceived duality of their status as both victim and delinquent. See Kimberly J. Mitchell et al., *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18, 19 (2010).

6. *Easy Access to FBI Arrest Statistics*, OFFICE JUV. JUST. & DELINQ. PREVENTION, http://www.ojjdp.gov/ojstatbb/ezaucr/asp/ucr_display.asp (last visited Dec. 20, 2013). See also U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 385* (2013), available at <http://www.state.gov/documents/organization/210742.pdf> (“In 2011, the most recent year for which data are available, 190 males and 581 females under 18 years of age were reported to the FBI by state and local authorities as having been arrested for prostitution and commercialized vice, compared to 149 males and 677 females in 2010.”).

7. See *Easy Access to FBI Arrest Statistics*, *supra* note 6.

took place in 76 cities across the country and “resulted in the recovery of 105 sexually exploited children, most of whom were between the ages 13 and 17, though some were as young as 9.”⁸

While it is clear that a significant number of domestic juveniles are involved in prostitution, the actual number is extremely difficult to determine. The fact that there is no standard definition of prostitution across states and that governmental statistics are based only on “reported” incidents further complicates this issue; the majority of juveniles’ sexual activity is simply not reported, whether it is “voluntary” or coerced.⁹ Homeless juveniles and runaways are especially at risk of becoming involved in prostitution, and the transient nature of this group also makes accurate calculation difficult. The National Runaway Switchboard estimated the number of runaway and homeless youth as between 1.3 and 2.8 million in 2006.¹⁰ Furthermore, a growing number of juveniles who would not typically be seen as “involved in prostitution” are now exchanging sex for favors. While this may not fit neatly into the general public conception of “prostitution,” Black’s Law Dictionary defines prostitution quite simply as “[t]he act or practice of engaging in sexual activity for money or its equivalent.”¹¹ One study found that an estimated 650,000 domestic juveniles exchange sex for favors, with boys being more likely to sell themselves than girls.¹² The same study showed that, of a nationally representative sample of more than 13,000 U.S. juveniles in grades 7 through 12, almost 4% reported having exchanged sex for drugs or money.¹³

Juveniles in the U.S., like juveniles everywhere, become involved in prostitution in a variety of ways: some are kidnapped and forced into sexual slavery; parents prostitute their children over the internet; runaways and homeless youth may engage in “survival sex” for food or shelter or are recruited by pimps; drug addicted teens may be forced into prostitution by their dealers; and gangs may require members to engage in commercial sex as part of initiations or as a means to fund gang activity.¹⁴ No matter how a juvenile becomes involved in prostitution, whether it is a one-time event or an ongoing

8. Hunter Stuart, *Child Trafficking Victims Recovered by the FBI Could Go to Jail*, HUFFINGTON POST (Aug. 9, 2013, 5:03 PM), http://www.huffingtonpost.com/2013/08/09/child-sex-trafficking-jail_n_3732099.html.

9. David Rosen, *Looking for Safe Harbor: Teen Prostitution in America*, COUNTERPUNCH (Aug. 2–4, 2008), <http://www.counterpunch.org/2008/08/02/teen-prostitution-in-america>. See also MICHELLE STRANSKY & DAVID FINKELHOR, *HOW MANY JUVENILES ARE INVOLVED IN PROSTITUTION IN THE U.S.?* (2008), available at http://www.unh.edu/ccrc/prostitution/Juvenile_Prostitution_factsheet.pdf (explaining why there are no reliable estimates regarding the number of juveniles actually actively involved in prostitution in the U.S.).

10. Rosen, *supra* note 9.

11. BLACK’S LAW DICTIONARY 1342 (9th ed. 2009).

12. See J. M. Edwards et al., *Sex Work: Prevalence and Correlates of Exchanging Sex for Drugs or Money Among Adolescents in the United States*, 82 SEXUALLY TRANSMITTED INFECTIONS 354, 355 (2006), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563846/pdf/354.pdf>; Rosen, *supra* note 9.

13. Edwards et al., *supra* note 12, at 356. See also Rosen, *supra* note 9.

14. See FINKELHOR & ORMROD, *supra* note 3, at 2 (citations omitted). See also *Teen Prostitution*, FBI.GOV (Sept. 14, 2012), <http://www.fbi.gov/news/stories/2012/september/teen-prostitution/teen-prostitution> (describing the termination of a gang-led prostitution ring).

occurrence, they are still children and face considerable emotional and physical danger.¹⁵ Even with respect to the juveniles who exchange sex with peers for “favors” such as drugs or money, the mentality that permits a child to equate their body with material goods, and the potential ramifications of subjecting one’s body to another as part of a bartering transaction, demonstrate a precarious mental and emotional state, one that seems to indicate a level of desensitization and self-objectification. In many instances, juveniles who are involved in prostitution come from already turbulent backgrounds and are using commercial sex as a means for survival, making them more susceptible to victimization by unscrupulous adults.¹⁶

In 2011, over 21% of juveniles ages 0–17 were living in poverty in the U.S., as compared to 15% of the nation as a whole.¹⁷ Across every state, the highest rates of poverty are consistently found in the juvenile population.¹⁸ In a country with the highest income disparities in the developed world,¹⁹ where children and teens suffer the brunt of such inequality, it is not hard to imagine juveniles, faced with fending for themselves, selling what may be their only possession—their body—in order to gain a meal or shelter. It is hard to imagine, however, the rationale behind laws that criminalize them for utilizing what they may see as their only means of survival, instead of recognizing their vulnerability and victimization.

II. THE DISCREPANCY: CURRENT LAWS AFFECTING JUVENILES INVOLVED IN PROSTITUTION

Federal sex trafficking laws were originally intended only for the protection of foreign juveniles trafficked into the U.S. for the sex trade. According to the Trafficking Victims Protection Act’s Purposes and Findings, the TVPA was enacted to fill a legislative void and assist in the prosecution of human trafficking

15. See Susan L. Pollet, *Child Prostitutes: Criminals or Victims?*, N.Y. L.J., Apr. 16, 2010, at 4, available at <http://207.29.128.60/ip/parent-ed/pdf/Teenageprostitution.pdf> (“They are physically beaten, repeatedly raped, kidnaped, and subjected to egregious forms of torture. Once discovered by law enforcement, these exploited youth are charged with criminal violations, sent to jail, and released back to their abuser.”).

16. See Tasha A. Menaker & Cortney A. Franklin, *Commercially Sexually Exploited Girls and Participant Perceptions of Blameworthiness: Examining the Effects of Victimization History and Race Disclosure*, 28 J. INTERPERSONAL VIOLENCE 2024, 2026 (2013) (“[R]esearch on child sexual exploitation has demonstrated that family-of-origin violence, child sexual abuse, poor school performance, emotional and mental health deficits, and negative family and peer interactions increase a juvenile’s vulnerability to commercial sexual exploitation.”). See also Natalie Decker, *Child Prostitutes: Criminals or Victims?*, MEET JUSTICE (June 7, 2011, 12:08PM), <http://meetjustice.org/2011/06/child-prostitutes-criminals-or-victims/> (“Regardless of how they got into the business, children in these situations often lack safe home lives, an understanding of the law, and are generally using prostitution as a last resort for survival. So even if a pimp or sex trafficker is not actively forcing a teen into commercial sex, minors involved in “survival sex” are still victims in the eyes of many activists.”).

17. *Juvenile Population Characteristics: Poverty*, OFFICE JUV. JUST. & DELINQ. PREVENTION (Sept. 13, 2012), <http://www.ojjdp.gov/ojstatbb/population/qa01403.asp?qaDate=2011>.

18. *Id.* (“In 2011, the proportion of juveniles living in poverty exceeded the national average in 24 states and the District of Columbia.”).

19. Mark Gongloff, *The U.S. Has the Worst Income Inequality in the Developed World, Thanks to Wall Street: Study*, HUFFINGTON POST (Aug. 16, 2013, 12:08PM), http://www.huffingtonpost.com/2013/08/15/income-inequality-wall-street_n_3762422.html.

and prevent “a modern form of slavery.”²⁰ Notably, the TVPA points to the fact that “victims are often illegal immigrants” and “are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked,” making them more vulnerable to coercion by traffickers.²¹ The very language of the statute demonstrates that, while the law may not have specifically excluded the protection of domestic victims, it clearly only had foreign victims in mind.

Even after the TVPA was enacted, providing protection and rehabilitative services to international victims, the U.S. continued to prosecute and criminalize American juveniles involved in the same trade domestically.²² The U.S. has recently reconciled its differing treatment of foreign and domestic juveniles involved in prostitution through the 2008 and 2013 reauthorizations of the Trafficking Victims Protection Act, which now extends to domestic juveniles, (at least ostensibly,) the same protections and services previously provided only to foreign juveniles. Unfortunately, however, there remains a discrepancy between federal and state laws on the treatment of domestic juveniles involved in prostitution. State laws are of particular importance here, because juvenile delinquency proceedings are primarily handled in state court, absent a substantial federal interest in the case.²³

Despite treating juveniles as victims in most instances involving sexual conduct, (e.g. child pornography and statutory rape), the majority of states still have laws prosecuting these juveniles for their involvement in commercial sexual acts. While a number of states have begun, albeit marginally, to follow in the footsteps of the federal government by establishing “safe harbor” laws for minors, many of these protections are available only at the discretion of the prosecutor or judge once the juvenile has already been charged and brought under the court’s jurisdiction.²⁴ It is both legally inconsistent and inherently

20. See Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101(a), (b)(1) (2012) (“The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”).

21. See *id.* § 7101(b)(17), (20).

22. See Katie Kronick, *Prosecuting Juvenile Prostitution*, AM. CRIM. L. REV. (2010), available at <http://www.americancriminallawreview.com/Drupal/blogs/blog-entry/prosecuting-juvenile-prostitution-11-17-2010> (“While U.S. law provides protection for foreign children trafficked into this country for the sex trade, American children are treated as criminals rather than victims.”); Pollet, *supra* note 15, at 4 (stating that juveniles are typically charged and prosecuted for prostitution violations); Nesheba Kittling, *God Bless the Child: The United States’ Response to Domestic Juvenile Prostitution*, 6 NEV. L.J. 913, 914–15, 918 (2006) (noting that the TVPA was only intended to protect foreign juveniles).

23. JOHN SCALIA, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: JUVENILE DELINQUENTS IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 1 (1997), available at <http://www.bjs.gov/content/pub/pdf/Jdfcjs.pdf>.

24. See, e.g., MASS. GEN. LAWS ANN. ch. 119, § 39L(a) (West 2012) (“Before or after arraignment in any juvenile delinquency or criminal proceeding against a sexually exploited child alleging that such juvenile or such defendant violated the prohibition against common night walking . . . there shall be a presumption that a care and protection petition on behalf of such child, or a child in need of services petition under section 39E, shall be filed.”); N.J. STAT. ANN. § 2A:4A-71(b) (West 2012) (“Every complaint shall be reviewed by court intake services for recommendation as to whether the complaint should be dismissed, diverted, or referred for court action. Where the complaint alleges a

unfair to prosecute juveniles for the commission of sexual acts that, absent a valuable exchange, they would otherwise be unable to legally consent to.

A. Federal Law

There is no federal law in the U.S. that specifically regulates prostitution; instead, there are several laws relating to trafficking in persons that generally treat prostitution as sex trafficking.²⁵ The primary federal law for the prosecution of sex trafficking in the U.S. is the Trafficking Victims Protection Act of 2000 (TVPA) and its 2003, 2005, 2008, and 2013 reauthorizations.²⁶ This law considers all minors (under the age of 18) engaged in commercial sex as victims of trafficking; and individuals who use force, fraud, or coercion to exploit minors below the age of fourteen for the purpose of sex trafficking can be sentenced to up to life in prison.²⁷ Victims of sex trafficking are also granted access to medical and social services under the TVPA.²⁸

Despite the broad language of the statute and the recent move to expand its protections to domestic juvenile prostitutes, the TVPA was not enacted with this group in mind.²⁹ The TVPA was originally intended solely for the protection of foreign victims of international sex trafficking, and this intent is evidenced by the refugee-like services provided through the Act which, in 2003, included the

crime which, if committed by an adult, would be a crime of the first, second, third or fourth degree, or alleges a repetitive disorderly persons offense or any disorderly persons offense defined in chapter 35 or chapter 36 of Title 2C, the complaint shall be referred for court action, unless the *prosecutor otherwise consents to diversion.*") (emphasis added); VT. STAT. ANN. tit. 13, § 2652(e) (West 2013) ("If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state *may* treat the person as the subject of a child in need of care or supervision proceeding.") (emphasis added); WASH. REV. CODE ANN. § 13.40.213(1) (West 2010) (explaining that "a prosecutor *may* divert the offense if the county in which the offense is alleged to have been committed has a comprehensive program" that provides a number of specific services) (emphasis added). *See also* Menaker & Franklin, *supra* note 16, at 2027 ("Several states have implemented similar legislation recognizing commercially sexually exploited youth as victims, providing protection and services for these victims, and criminalizing the trafficking of humans for sexual purposes. There remains, however, a disconnect between federal and state laws in this regard, as minors forced into prostitution are labeled as delinquents and put into the custody of the juvenile justice system in many state and local jurisdictions."); POLARIS PROJECT, *supra* note 1, at 35 ("[M]ost state statutes that provide some measure of protection to minors seek to divert them from prosecution if certain conditions are satisfied.").

25. *See U.S. Laws on Trafficking in Persons*, U.S. DEP'T OF STATE, <http://www.state.gov/j/tip/laws/index.htm> (last visited Feb. 15, 2014); Pollet, *supra* note 15, at 4.

26. Trafficking Victims Protection Act, 22 U.S.C. §§ 7101-7112 (2012); POLARIS PROJECT, *supra* note 1, at 5. *See also* Pollet, *supra* note 15, at 4 (quoting Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 97 (2008)).

27. Trafficking Victims Protection Act, 22 U.S.C. § 7102(15) (2012); POLARIS PROJECT, *supra* note 1, at 5.

28. Trafficking Victims Protection Act, 22 U.S.C. § 7105(a)(1)(B), (c)(1)(B) (2012). *See also* POLARIS PROJECT, *supra* note 1, at 5-6.

29. *See* Trafficking Victims Protection Act, 22 U.S.C. § 7101(b)(2) (2012) (focusing on the "international sex trade."). *See also* Kittling, *supra* note 22, at 915 ("Although the statute appears to provide protection for juvenile prostitutes who are American citizens, it was not enacted with this group in mind. The TVPA seeks to protect foreign juvenile prostitutes trafficked domestically in the United States, as illustrated by the prevention, assistance and protection programs developed by the Act.").

provision of visas “enabling certain trafficking victims to live and work legally in the United States for three years while their cases are investigated and prosecuted” and “vocational and English language training.”³⁰ In 2004, the Department of Justice even conceded that:

[T]he Department of Health and Human Services’s refugee benefits and services programs and the Office for Victims of Crime’s victim assistance funds are available to alien trafficking victims who are trafficked internationally into the United States as well as to alien victims who are trafficked internally, *but not to U.S. citizen victims of trafficking*.³¹

In practice, domestic victims were excluded because the legislative history creating the grant programs seemed to indicate that the money applied only to “aliens,” as certification was required for eligibility and only aliens were required to be certified.³² Additionally, U.S. citizens were thought to have preexisting access to services, such as Temporary Assistance for Needy Families, Medicaid, and food stamps, that non-citizen victims did not.³³

In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act amended the TVPA of 2000 to include a subsection providing “assistance for United States citizens and lawful permanent residents” and allowing the Secretary of Health and Human Services, along with the Attorney General and Secretary of Labor to establish a program for the assistance of these minor domestic trafficking victims.³⁴ The 2008 reauthorization also authorized appropriations to create these programs.³⁵ Despite this provision, however, there is still uncertainty as to whether U.S. citizens are eligible for aid under all of the TVPA’s anti-trafficking grant programs.³⁶ According to the Attorney General’s Annual Report on Trafficking in Persons for fiscal year 2009,³⁷ “[t]he funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and *may not be used to assist U.S. citizen victims*.”³⁸ Notwithstanding this statement, funds

30. U.S. DEP’T OF JUSTICE, *Accomplishments in the Fight to Prevent Trafficking in Persons*, U.S. DEP’T OF STATE (Feb. 25, 2003), <http://2001-2009.state.gov/g/tip/rls/fs/17968.htm>.

31. U.S. DEP’T OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003 6 n.1 (2004), available at <http://www.justice.gov/archive/ag/annualreports/tr2003/050104agreporttocongresstvprav10.pdf> (emphasis added).

32. *Id.*

33. *Id.*

34. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, sec. 213(a)(1), § 107(f)(1), 122 Stat. 5044, 5064-65, available at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>.

35. *Id.* § 213(a)(2).

36. ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., RL 34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 25 (2013), available at <http://www.fas.org/sgp/crs/row/RL34317.pdf>.

37. A fiscal year runs from October 1 through September 30. U.S. DEP’T OF STATE, *supra* note 6, at 382.

38. DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2009 17 (2010), available at <http://www.justice.gov/archive/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf> (emphasis added). See also KRISTIN M. FINKLEA ET AL., *Summary*, in CONG.

have been appropriated to the Department of Health and Human Services each year since 2008 to carry out the provisions of the TVPA, thus it would seem that such funds would be equally available to both foreign and domestic victims.³⁹

One possible explanation for the lack of services available to U.S. citizens is Congress' failure to provide additional funding for such services.⁴⁰ While Congress endeavored to broaden the pool of victims who had access to services provided by the Departments of Justice and Health and Human Services, it failed to likewise broaden the pool of funds necessary for the expansion of these services or to stipulate which specific services should be funded.⁴¹ While there does not seem to be an official explanation (at least not a public one), for Congress' failure to expand funding, budgetary concerns seem a likely culprit. To be fair, U.S. citizen victims are eligible for other crime victim benefits and public entitlement programs that non-U.S. citizens are not—such as Medicaid—although these services are not specifically tailored to the needs of sex trafficking victims.⁴²

While it is clear that a gap in the provision of services remains, federal law does successfully shield domestic juveniles involved in prostitution from prosecution for prostitution-related offenses. The TVPA treats all juveniles involved in prostitution as sexually exploited minors and thus victims, regardless of whether they were coerced by a third-party exploiter or were operating—even seemingly voluntarily—on their own.⁴³ This protection from prosecution is a “safe harbor” provision automatically provided to all victims of sex trafficking, both foreign and domestic.

RESEARCH SERV., R41878, SEX TRAFFICKING OF CHILDREN IN THE UNITED STATES: OVERVIEW AND ISSUES FOR CONGRESS (2011), available at <http://www.fas.org/sgp/crs/misc/R41878.pdf> (“Despite language [in the TVPA] that authorizes services for citizen, lawful permanent resident, and noncitizen victims, appropriations for trafficking victims’ services have primarily been used to serve noncitizen victims.”).

39. SISKIN & WYLER, *supra* note 36, at 25–26. The authors noted that approximately \$10 million has been appropriated each year, with a high of \$12.5 million in 2010. *Id.* at 25 n.116.

40. See POLARIS PROJECT, *supra* note 1, at 40 (noting that, while the 2008 reauthorization of the TVPA directed the U.S. Department of Health and Human Services to appropriate money to fund services for domestic trafficking victims, no money had been appropriated for this program at the time of this report). But see U.S. DEP’T OF STATE, *supra* note 6, at 381 (“During this reporting period, a policy change at the Department of Justice (DOJ) allowed federal funding for victim services to support U.S. citizen victims of human trafficking as well as foreign national victims.”).

41. FINKLEA ET AL., *supra* note 38, at 4 (“[W]hile Congress has expanded authorized funding to include victim services for trafficking victims in the United States—irrespective of immigration status—appropriations for trafficking victims services have simultaneously remained relatively stable since the TVPA passed in 2000. . . . Congress has not appropriated additional funds for services that target a broader spectrum of victims that have been subsequently authorized.”).

42. See *id.* at 3–4.

43. POLARIS PROJECT, *supra* note 1, at 33. See also FINKLEA ET AL., *supra* note 38, at 5 (“In the case of minors, there is general agreement in the United States and much of the international community that the trafficking term applies to children, regardless of whether the child’s actions are believed to be forced or voluntary.”) (citing LINDA A. SMITH ET AL., THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN iv (2009), available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf).

B. State Law

Even as treatment—with the exception of victim services—has been equalized on the federal level, there are still major discrepancies on the state level regarding how juveniles involved in prostitution are treated compared to federal law and other state laws. Inconsistencies between states, as well as within states generally involve conflicting definitions of “minor” and irregularities as to when a juvenile’s sexual conduct renders them a victim or a criminal. As of 2013, forty-eight states and the District of Columbia have laws criminalizing sex trafficking in some form.⁴⁴ Similar to federal law, most state statutes define sex trafficking as a forced sexual act in exchange for something of value.⁴⁵ In contrast to the federal law, however, there is no consistent definition regarding who is considered a minor, and in many cases states’ definitions contradict the TVPA’s definition of minor as anyone below the age of eighteen.⁴⁶ Not only does state law often directly contradict federal law, the laws regulating juveniles involved in prostitution are also inconsistent state-to-state, and often even internally inconsistent with regard to other laws within the state that serve to regulate the sexuality of minors (i.e., age-of-consent and child pornography laws).⁴⁷

One encouraging aspect of state law, however, is that under most state sex trafficking statutes, minors are afforded greater protection by way of harsher penalties or lowered evidentiary requirements for convicting perpetrators charged with an offense involving a minor. “In some cases, trafficking a minor is considered to be a distinct offense In others it is simply an aggravating factor that affects sentencing.”⁴⁸ For example, New Mexico offers harsher penalties when victims are below 16 and 13 years of age, whereas Illinois has added protections for all victims under the age of 18, but with an option for an aggravated charge if the victim is 17 or younger.⁴⁹ One of the most protective states in this regard, Alaska, does not require any proof of force, fraud, or coercion when the victim is below the age of twenty, thus affording *all* teenage victims additional protections.⁵⁰ In addition to providing harsher penalties for the exploitation of minors, several states have followed the TVPA’s lead and drafted various “safe harbor” laws to shield certain groups from prosecution.

44. POLARIS PROJECT, *supra* note 1, at 6 (explaining that Colorado and Pennsylvania are the exceptions; all 50 states and D.C. have laws criminalizing labor trafficking, *id.* at 10.). See also ALA. CODE § 13A-6-152(a)(1) (2013) (finding a human trafficking crime if one “knowingly subjects another person to labor servitude or sexual servitude through use of coercion or deception.”); ARIZ. REV. STAT. ANN. § 13-1307(A)(1), (B) (2010) (making it unlawful to transport someone 18 years or older with “[t]he intent to cause the other person to engage in any prostitution or sexually explicit performance by deception, force or coercion” and eliminating the requirement of deception, force or coercion if the individual is under 18).

45. POLARIS PROJECT, *supra* note 1, at 6.

46. See *id.* at 7.

47. See U.S. DEP’T OF STATE, *supra* note 6, at 383 (“[S]tate anti-trafficking laws generally lack uniformity and consistency across jurisdictions.”). See also discussion on age of consent and child pornography laws *infra* Part II.B.

48. POLARIS PROJECT, *supra* note 1, at 7.

49. *Id.*

50. See ALASKA STAT. ANN. § 11.66.110(a)(2) (West 2013) (“A person commits the crime of sex trafficking in the first degree if the person . . . induces or causes a person under 20 years of age to engage in prostitution.”). See also POLARIS PROJECT, *supra* note 1, at 7.

While this is certainly a step in the right direction, too few states have followed suit: only eighteen currently have “safe harbor” laws that provide any level of protection from prosecution for sexually exploited minors.⁵¹

Most state safe harbor laws are grounded in age-based immunization from prosecution, with states identifying the age below which the juvenile will be treated as a victim. The states with the most protective safe harbors are Illinois, Nebraska, and Tennessee, with all three states providing immunity from prosecution to all juveniles below the age of eighteen.⁵² Connecticut’s law is only slightly less protective, immunizing all juveniles below the age of 15, and providing 16- and 17-year-olds with the rebuttable presumption that they lacked the necessary *mens rea* to be criminally culpable.⁵³ No other states offer complete immunity to any group of minors for prostitution-related offenses, and instead only consider age as one factor influencing prosecutorial decisions.

The large majority of the eighteen states with any form of safe harbor whatsoever only offer protection to juveniles involved in prostitution if certain conditions are satisfied first. Many states offer “conditional diversion” whereby a juvenile must complete certain court-ordered programs, such as treatment or rehabilitative programs, before the underlying criminal charge is dismissed and/or expunged.⁵⁴ The problem with this method of “protection” is that the juvenile is labeled a criminal or a delinquent and brought under the court’s jurisdiction before any help is ever offered. This only adds to the cycle of abuse and marginalization that these young people have experienced and serves to further undermine any trust they may have in the system that is supposed to protect them. Other states have no set rules regarding the provision of alternative services and instead leave the option for diversion completely up to the discretion of the judge or prosecutor.⁵⁵ Some states even rule out the option of

51. Only three states, Illinois, Nebraska, and Tennessee, have statutes that provide absolute prosecutorial immunity for prostitution-related offenses to anyone under 18. 720 ILL. COMP. STAT. ANN. 5/11-14(d) (West 2014) (“[A] person under the age of 18 . . . shall be immune from prosecution for a prostitution offense.”); NEB. REV. STAT. ANN. § 28-801(5) (West 2013) (“If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation [for prostitution] is a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense . . . and shall be subject to temporary custody . . . and further disposition under the Nebraska Juvenile Code.”); TENN. CODE ANN. § 39-13-513(d) (West 2012) (“[I]f it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation [for prostitution] is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult.”). Texas, while not having a statutory safe harbor, has established one by case law. *In re B.W.*, 313 S.W.3d 818, 826 (Tex. 2010) (holding that a child under the age of 14 may not be charged with prostitution because, under statutory rape laws, children may not legally consent to sex). See also POLARIS PROJECT, *supra* note 1, at 34.

52. POLARIS PROJECT, *supra* note 1, at 34.

53. See CONN. GEN. STAT. ANN. § 53a-82(a), (c) (West 2013) (“In any prosecution of a person sixteen or seventeen years of age for an offense under this section, there shall be a presumption that the actor was a victim of conduct by another person.” *Id.* at (c).); POLARIS PROJECT, *supra* note 1, at 34.

54. See MASS. GEN. LAWS ANN. ch. 119, § 39L(c) (West 2012) (allowing a child to be arraigned prior to the provision of services, and revoking services and reinstating delinquency or criminal proceedings if conditions of treatment are not met). See also POLARIS PROJECT, *supra* note 1, at 35.

55. POLARIS PROJECT, *supra* note 1, at 35.

diversion completely for juveniles with prior offenses.⁵⁶ While the states whose safe harbors provide complete age-based immunity seem to have aligned their maximum age of protection with the state's age of consent,⁵⁷ the states offering conditional diversion programs and discretionary immunity have created a confusing middle ground where a juvenile may be transformed into a victim or a criminal based on the whims of a prosecutor.

Every state has statutory rape and age of consent laws, and every state has laws prohibiting child pornography; the very existence of these laws demonstrates states' recognition that juveniles below a certain age are incapable of making decisions about their own sexual conduct. If one is legally prohibited from making deliberate consensual decisions about when to engage in sex and with whom, how is it logical that that same individual can be criminalized and prosecuted for engaging in sexual conduct under the duress of survival or threats of force? These laws simply make no sense. Of the thirty-two states and Washington, DC that do not currently have safe harbor laws, seven have set their age of consent⁵⁸ at 18 years of age.⁵⁹ This means that, in these states, a young adult cannot freely consent to sexual intercourse until they are 18 years old. However, in these same states, a sexually exploited juvenile below the age of 18 can be prosecuted for prostitution-related offenses. The absurdity of this result is too glaring to reiterate.

Despite failing to recognize juveniles as victims in the context of prostitution, every state continues to recognize juveniles as victims in the context of child pornography. Forty states and D.C. define "minor" or "child" as anyone below eighteen years of age for the purposes of child pornography laws.⁶⁰ Thus,

56. *Id.*

57. See ASAPH GLOSSER ET AL., STATUTORY RAPE: A GUIDE TO STATE LAWS AND REPORTING REQUIREMENTS 6 (2004), available at <http://aspe.hhs.gov/hsp/08/sr/statelaws/report.pdf>.

58. For purposes of this note, age of consent refers to the age at which an individual may engage in sexual intercourse with whomever they choose without interference of the law. Some states have tiered statutes, allowing younger juveniles to engage in sexual conduct if the partner is within a certain age range.

59. See GLOSSER ET AL., *supra* note 58, at 6-7 (Arizona, Delaware, Idaho, Oregon, Utah, Virginia, and Wisconsin); ARIZ. REV. STAT. ANN. § 13-1405(A) (2011) ("A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age."); DEL. CODE ANN. tit. 11, § 770(a)(2) (West 2010) ("A person is guilty of rape . . . when the person . . . [i]ntentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older."); IDAHO CODE ANN. § 18-6101(2) (West 2013) ("Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female . . . [w]here the female is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the female."); OR. REV. STAT. ANN. § 163.315(1)(a) (West 2013) ("A person is considered incapable of consenting to a sexual act if the person is [u]nder 18 years of age."); UTAH CODE ANN. § 76-5-401.2(1) (West 2013) ("As used in this section, 'minor' means a person who is 16 years of age or older, but younger than 18 years of age, at the time the sexual conduct . . . occurred."); VA. CODE ANN. § 18.2-371 (West 2008) (making it illegal for "[a]ny person 18 years of age or older" to "engage[] in consensual sexual intercourse with a child 15 or older."); WIS. STAT. ANN. §§ 948.01, .09 (West 2011 & West 2013) (making it unlawful to have sexual intercourse with a child who is not the defendant's spouse, and defining child as "a person who has not attained the age of 18 years.").

60. ALASKA STAT. ANN. § 11.41.455(a) (West 2013) (Alaska); ARIZ. REV. STAT. ANN. § 13-3551(5) (2013) (Arizona); ARK. CODE ANN. §§ 5-27-302(1), -601(1) (West 2013) (Arkansas); CAL. PENAL CODE §§

while a juvenile below the age of 18 who is portrayed in a sexually explicit image taken or possessed by an adult will be considered a victim, the same juvenile who is physically subjected to sexually explicit conduct with an adult after a valuable exchange is considered a criminal. It may be that the creation of a pornographic image of a juvenile can be damaging in perpetuity: a permanent, tangible reminder of the exploitation that juvenile endured; this indeed warrants the recognition of the juvenile's victimhood. By the same token, however, the physical exploitation and abuse visited upon the body and soul of a juvenile subjected to sex-for-pay is also damaging in perpetuity, and the juvenile's victimhood is no less worthy of recognition.

III. THE FIX: REMAINING PROBLEMS AND RECOMMENDATIONS

In order to fully demonstrate our recognition of juveniles involved in prostitution's victimhood we need to do more than simply fix the current inconsistencies existing in the law. While this is indeed an important step—a step that a number of states have yet to take—we can look to federal law to see that this is just the first step towards ensuring that domestic juveniles are receiving adequate protections. In addition, it is important that more efforts be made to gather accurate information on this population in order to be better equipped to provide services specifically aimed at rehabilitating these juveniles. If treatment and services are to be effective and efficient, more data is necessary to gauge the breadth of services needed, as well as what services currently available are the most successful. As we can learn from the persistent gaps in services available through the TVPA, adequate funding is crucial to the provision of adequate treatment and resources.

To begin, it seems that the most extensive problem that stands in the way of both the federal government and the states properly treating domestic juveniles

311.1(a), .2(b), .3(a), .4(b) (West 2013) (California); COLO. REV. STAT. ANN. § 18-6-403(2)(a) (West 2009) (Colorado); D.C. CODE § 22-3101(2) (2010) (District of Columbia); FLA. STAT. ANN. § 775.0847(1)(a) (West 2007) (Florida); GA. CODE ANN. § 16-12-100(a)(1) (West 2013) (Georgia); HAW. REV. STAT. §§ 707-750(2)(b), -750(2)(b), -752(2)(b) (West 2013) (Hawaii); IDAHO CODE ANN. § 18-1507(1)(b) (West 2013) (Idaho); 720 ILL. COMP. STAT. ANN. 5/11-20.1(a)(1) (West 2014) (Illinois); IND. CODE ANN. § 35-42-4-4(b)(1) (West 2014) (Indiana); IOWA CODE ANN. § 728.1(4) (West 2012) (Iowa); KAN. STAT. ANN. § 21-5510(a)(1) (West 2013) (Kansas); KY. REV. STAT. ANN. § 531.330 (West 2009) (Kentucky); ME. REV. STAT. ANN. tit. 17-A, § 281(2) (2013) (Maine); MASS. GEN. LAWS ANN. ch. 272, §§ 29A(a), 29(B)(a), 29C (West 2013) (Massachusetts); MICH. COMP. LAWS ANN. § 750.145c(1)(b) (West 2013) (Michigan); MISS. CODE ANN. § 97-5-31(a) (West 2013) (Mississippi); MO. ANN. STAT. § 573.037(1) (West 2013) (Missouri); NEB. REV. STAT. ANN. § 28-1463.02(1) (West 2013) (Nebraska); NEV. REV. STAT. ANN. § 200.508(1) (West 2013) (Nevada); N.J. STAT. ANN. § 2C:24-4(b)(1) (West 2013) (New Jersey); N.M. STAT. ANN. § 30-6A-2(D) (West 2013) (New Mexico); OHIO REV. CODE ANN. § 2907.01(M) (West 2008) (Ohio); OKLA. STAT. ANN. tit. 21, §§ 1021.2(A), 1024.1(A) (West 2013) (Oklahoma); OR. REV. STAT. ANN. § 163.665(1) (West 2013) (Oregon); 18 PA. CONS. STAT. ANN. § 6312(b) (West 2012) (Pennsylvania); R.I. GEN. LAWS ANN. § 11-9-1(b) (West 2013) (Rhode Island); S.C. CODE ANN. § 16-15-335 (2013) (South Carolina); S.D. CODIFIED LAWS § 22-24A-2(3) (2013) (South Dakota); TENN. CODE ANN. § 39-17-1002(3) (West 2013) (Tennessee); TEX. PENAL CODE ANN. § 43.25(a)(1) (West 2007) (Texas); UTAH CODE ANN. § 76-5b-103(7) (West 2013) (Utah); VA. CODE ANN. § 18.2-370(B) (West 2013) (Virginia); WASH. REV. CODE ANN. § 9.68A.011(5) (West 2013) (Washington); W. VA. CODE ANN. § 61-8C-1(a) (West 2013) (West Virginia); WIS. STAT. ANN. § 948.01(1) (West 2011) (Wisconsin); WYO. STAT. ANN. § 6-4-303(a)(i) (West 2013) (Wyoming). North Dakota does not explicitly define minor, but imputes the federal definition as below the age of eighteen. See N.D. CENT. CODE ANN. § 12.1-27.2-02 (West 2013).

involved in prostitution like victims is simply the lack of resources. Even in states that have safe harbor laws and allow for diversion in order to provide treatment services, many juveniles are still sent to detention centers because there is just nowhere else for them to go.⁶¹ “Nationwide, organizations specializing in support for these victims collectively have fewer than 50 beds. Other facilities, such as runaway and homeless youth shelters and foster care homes, may not be able to adequately meet the needs of victims or keep them from pimps/traffickers and other abusers.”⁶² Just as Congress failed to authorize additional funds alongside its expansion of program recipients, many states have simply failed to create a way to provide the funding necessary to truly address the needs of these juveniles after the point of recognizing them as victims.⁶³

Many of the young people engaged in sex work likely ended up on the street because they were running from abusive family situations, were put out, or were wards of the state to begin with; thus, once they are picked up by local authorities they typically have no homes to return to. Furthermore, there is the very real risk that a juvenile involved in prostitution has formed attachments to their pimps or victimizers, and may be in danger of running back to the street if placed in a safe house or foster home without some sort of rehabilitative treatment first. Placing these juveniles in detention centers may prevent those who have been brainwashed or are suffering from Stockholm syndrome from returning to prostitution. This problem is two-sided though: on the one hand, we want to prevent unstable juveniles from submitting themselves to further victimization; on the other hand, we want to empower them to make decisions for themselves, while also acknowledging their status as victims—a goal that is extremely hard to achieve when the juvenile perceives themselves as being held against their will.⁶⁴

One way to rectify the lack of resources available is to implement fines, and/or asset forfeiture provisions, alongside the statutes on trafficking and prostitution. Currently, of the eighteen states that have safe harbor laws, seven fund their services through various types of fines.⁶⁵ The fines implemented by these states include fees for impounding the cars of “Johns” who have been arrested for the solicitation of minors, as well as more general fines for violating prostitution laws, whether or not their cars were impounded.⁶⁶ All or a portion of these fines are then deposited into funds for the purpose of subsidizing the provision of services such as safe houses and treatment programs.⁶⁷ Comparably, the federal TVPA provides for mandatory asset forfeiture, although

61. Stuart, *supra* note 8.

62. FINKLEA ET AL., *Summary*, *supra* note 38.

63. See POLARIS PROJECT, *supra* note 1, at 35 (“Several states with safe harbor laws do not provide for funding for services for child trafficking victims.”).

64. See Rosen, *supra* note 9 (“The kids picked up in a prostitution bust would be forced to accept state services whether they want them or not. . . . [T]he young person might feel that they do not have ability to advocate for their own interests. Thus, the intervention will only aggregate the sense of betrayal that drove the kid to the streets in the first place.”).

65. POLARIS PROJECT, *supra* note 1, at 35-36 (Arkansas, Florida, Illinois, Kansas, Kentucky, Louisiana, and Washington).

66. *Id.*

67. *Id.*

the assets forfeited do not go to the provision of victim services, rather they are paid to the trafficking victims themselves through a “restoration and remission” process.⁶⁸ While this is beneficial to juveniles involved in prostitution who have third party exploiters, no benefit can be derived for the larger pool of victims who may be operating on their own or whose exploiter has not been identified or convicted. Also, directing large sums of money in the form of restitution to victims of sex trafficking, particularly to juveniles or individuals who were juveniles when they became involved in prostitution, may not be the most effective way to help these victims. Considering that many of these victims are unlikely to have a substantial degree of money management skills, and a large number of them may be suffering from drug addiction or other mental/emotional health problems, these forfeited assets may ultimately cause them more problems than they solve.

The lack of research on the symptoms and effects of juvenile prostitution on the juvenile’s mental and emotional health is also a roadblock to offering adequate rehabilitative treatment and services. Without data on the myriad of problems that a juvenile may face in trying to return to a normal life after being involved in prostitution, we are in a poor position to ensure a smooth transition. Many juveniles rescued from the streets may suffer from harms such as emotional and mental health problems, drug addiction, sexually transmitted diseases, or post-traumatic stress disorder, just to name a few.⁶⁹ While the lack of funding is most definitely a problem, as mentioned above, there needs to be adequate research regarding what kinds of services and treatments are needed to best serve this vulnerable group; just throwing money at the problem will be largely ineffective.

More data regarding the specific demographics of this group is also needed to ensure that proper services are being provided. While the general perception is that juveniles involved in prostitution are largely young girls,⁷⁰ some estimates indicate that the number of boys involved in prostitution may be equal to (or even exceeding) that of girls.⁷¹ According to data from the Office of Juvenile Justice and Delinquency Prevention and the National Incident-Based Reporting System, more male juveniles are being arrested for prostitution than females.⁷² This data may suggest an actual increase in the number of male juveniles, or it may be exaggerated for a number of other reasons, demonstrating that males may be more visible or more likely to be arrested than their female

68. *Id.* at 14 (noting that forfeited assets previously were directed to the U.S. Treasury).

69. See COLLEEN FERRANTI, *SEXUAL EXPLOITATION: A FORENSIC EVALUATION OF JUVENILE PROSTITUTION* 35 (2007) (“[N]early all juveniles living on the street suffer from serious mental impairments which include behavioral disorders, schizophrenia, post traumatic stress disorder, and depression.”).

70. *Id.* at 34 (“Both the mainstream media and Hollywood have perpetrated the view that juvenile prostitution is a female oriented business through various films . . . giving even more weight to the belief that juvenile prostitution is only a female issue.”).

71. See Nina Storchlic, *The Sex Industry’s Shadow Victims*, THE DAILY BEAST (Sept. 16, 2013, 4:45 AM), <http://www.thedailybeast.com/witw/articles/2013/09/16/combating-the-hidden-scourge-of-boys-in-the-sex-industry.html>.

72. FINKELHOR & OMROD, *supra* note 3, at 10.

counterparts.⁷³ Ultimately, whatever the reason, these numbers indicate that uncertainties still exist about who these juveniles actually are, a fact that will continue to undermine any support or prevention efforts unless we become better informed.⁷⁴

One possible reason that research in this area has been so scarce is because this population is exceedingly transient, making it extremely difficult to locate juveniles currently involved in prostitution, let alone those who are willing to talk to researchers about personal aspects of their lives. It is likely that many juveniles fear the stereotypes attached to their activities, the risk of being viewed as a criminal or being arrested, as well as the threat of retaliation from a third party exploiter, such as their pimp.⁷⁵ Moreover, as this topic is a sensitive and controversial issue, it is likely that such research may be difficult ethically, as researchers may feel obligated to “rescue” these juveniles—a fact that would impede their objectivity.⁷⁶ In combating this issue, it is crucial that researchers remain cognizant of the various aspects influencing their interactions with juveniles involved in prostitution, including, but not limited to their own biases and stereotypes, the potential misconceptions or shame of the juvenile, as well as a degree of mutual distrust. It may be helpful for scholars wishing to engage in such research to undergo some form of sensitivity training in order to be better equipped to gain the juvenile’s trust and thus achieve more honest, and therefore more valuable, answers.

CONCLUSION

States and the federal government need to continue to implement laws that expand both protection for, and services available to, domestic juveniles involved in prostitution. The federal government has stepped up and is leading the way to increased recognition of victimhood, and it is crucial that the individual states continue to follow suit and act as protectors rather than prosecutors of our nation’s children. Instead of focusing our discussion about domestic prostitution on whether it should be legalized or abolished, we must refocus our efforts on how we can better protect children, no matter the outcome of the legalization debate.

While there is a definite need for more research, more funds, and more services specifically targeting domestic juveniles involved in prostitution, we must start by shifting our view of these juveniles from criminals to victims, in order to begin recognizing them as worthy of our attention. As long as we view these youth as deviants and delinquents who chose to engage in what we deem to be morally corrupt behavior, we will be loathe to make the investments—both financial and intellectual—necessary to effectuate changes aimed at their protection and, ultimately, the eradication of juvenile sexual exploitation.

73. *Id.*

74. See U.S. DEP’T OF STATE, *supra* note 6, at 385 (“NGOs reported that identified child trafficking victims, especially boys and transgender youth, face difficulties obtaining needed services. In particular, NGOs stated that child victims are in need of emergency, transitional, and long-term housing services, as well as age- and culturally-appropriate shelter.”).

75. FERRANTI, *supra* note 69, at 11.

76. See *id.*

In examining the United States' response to domestic juveniles involved in prostitution on both a state and federal level, it is clear that, while we have begun to move in the right direction, we still have a long way to go. By building on our recognition of juveniles as victims with respect to both age of consent and child pornography laws, the logical next step is to continue protecting our youth from sexual exploitation by recognizing their victimhood in the context of prostitution. The tendency to grant only those juveniles with third party exploiters the victim status that all juveniles involved in prostitution deserve, only serves to further marginalize a vulnerable group of young people subjecting themselves to sexual exploitation in order to meet their basic human needs.